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NO. 293. 31

IN THE

Supreme Court of the United States

OCTOBER TERM, 1902.

Office Supreme Court U. S.
FILED
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JAMES H. McKENNEY,
Clerk.

MARC HUBBERT, - - - - - - - - - - *Petitioner,*

VERSUS

CAMPBELLSVILLE LUMBER CO., - - - *Defendant.*

BRIEF FOR PETITIONER.

W. O. HARRIS,
For Petitioner.

JOHN P. MORTON & COMPANY, PRINTERS, LOUISVILLE.

IN THE

Supreme Court of the United States,

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MARC HUBBERT, - - - *Petitioner,*

No. 293. *VERSUS*

CAMPBELLSVILLE LUMBER CO., - *Defendant.*

Brief for Petitioner.

STATEMENT OF THE CASE.

I.

By an Act of the Legislature of Kentucky, approved March 18, 1878, and printed in an Appendix to this brief, the County of Taylor was authorized to issue bonds to the amount of $125,000, to be sold at par and the proceeds used to compromise a previous bonded debt of the County at rates not exceeding fifty cents on the dollar.

By an Act approved February 27, 1882, the amount of bonds authorized was increased to $150,000. (See Appendix.)

II.

Petitioner Marc Hubbert, a holder of coupons cut from these bonds, obtained judgment by default against the County in the Circuit Court of the United States for the District of Kentucky for $2,963.13 (Rec., p. 13), on which judgment execution issued and was returned "no property found." (See affidavit of Hubbert, Rec. 70.)

III.

The Amended Act provides the following method of enforcing judgments rendered upon bonds and coupons issued under it:

> "Sec. 2. That in the event judgment shall be rendered on any bond or bonds which may be issued by the county of Taylor under the provisions of the act to which this is an amendment, or on any coupons of any such bond or bonds, such judgments shall constitute a lien upon all real and personal property in said county, subject to taxation under the revenue laws of this Commonwealth.
>
> "Sec. 3. If the court rendering such judgment shall be of opinion that such serious obstruction is likely to be offered to the enforcement of any such judgment as will materially delay it, it shall, on motion of the plaintiff therein, refer the same to a commissioner, with instructions to ascertain and report, on a day to be by it named, the amount which it will be necessary for the holders or owners of any such property to pay in order to raise promptly, in proportion to the value of such property owned by each, a sum sufficient to pay the said judgment, and all costs of the said suit, and the cost of collecting the same, making due allowance for probable delinquencies. Upon making any such reference the said court shall make an order, and, if need be, enforce it by process of contempt, directing the officers having charge of the books containing the last assessment for the purpose of State taxation to deliver them to the said commissioner, to be by him used in making out his report."

The subsequent sections provide for the filing of the Report in Court, its publication in a newspaper for three weeks, for thirty days for exceptions and for judgment against the taxpayers found to be liable for the tax necessary to pay the judgment. (See Appendix, p. 14.)

IV.

After the return of "no property found" on his execution, Hubbert filed an affidavit setting out the fact that the opposition in the County to the payment of the bonds was so great that for several years no sheriff had qualified and no money had been collected on levies made (Rec. 70), and on the filing of this affidavit a commissioner was appointed and a report made assessing upon the taxpayers the amount necessary to pay off the judgment. (Rec. 71, 72.)

The advertisement of the report and other steps required by the Amended Act were strictly pursued. Exceptions were filed by the County (p. 16), but no taxpayer appeared or filed any exception, and judgment was rendered against each taxpayer for the amount found due by the report. (Rec. 21.)

V.

Among the judgments rendered was one for $123.76 against the Campbellsville Lumber Company, upon which execution of *fieri facias* was issued. (Rec. 70.) The Lumber Company thereupon appeared and moved the Court, on affidavit filed, to set aside the judgment and quash the execution. (Rec. 65.)

The grounds of the motion are stated in the affidavit and may be summarized as follows:

1. That the Lumber Company was not before the Court by service of process or notice.

2. That the assessment against it was excessive.

3. That the bonds from which the coupons sued on were cut did not contain the stipulation required by Section 10 of the Amended Act.

4. That Hubbert was not a *bona fide* holder of the coupons upon which the judgment against the county was rendered.

5. That the Act under which the judgment against the Lumber Company was rendered had been repealed. (Rec. 66.)

The motion to set aside the judgment was overruled and a Bill of Exceptions tendered and allowed. (Rec. 66.)

VI.

A Writ of Error was thereupon sued out against the judgment rendered against the Lumber Company and against the order overruling its motion to set that judgment aside, and upon the hearing in the Circuit Court of Appeals the judgment of the Circuit Court was held to be void. (See Opinion, Rec. 79.)

The Bill of Exceptions embodied much of the record previously made, and the clerk in making out his transcript on the Writ of Error copied these parts of the record from the bill instead of putting them in their places as they originally appeared in the record. This breaks the chronological order of the pleadings and orders, and confuses the record. For this confusion the petitioner in this Court is in no wise responsible.

ASSIGNMENT OF ERRORS.

It is respectfully averred that the Circuit Court of Appeals erred in holding that the judgment against the Campbellsville Lumber Company was void.

BRIEF OF ARGUMENT.

Taking the questions raised by the Writ of Error in the order in which they are stated in the affidavit filed in support of the motion to set aside the judgment, we will discuss

I.

Whether there was due process of law against the Lumber Company.

The Circuit Court of Appeals found that there was, and we will not discuss the question further than to say that statutes affording substantially similar remedies for the enforcement of municipal bonds were enforced in

Stansell v. Levee Board, 13 F. R. 846;

Supervisors v. Rogers, 7 Wall. 175.

In more recent cases involving local assessments for streets and sewers it is held that notice by publication is due process of law.

Lent v. Tillson, 140 U. S. 316;

Paulsen v. Portland, 149 U. S. 30.

In the case at bar it is not disputed that the three weeks' notice by publication, required by Section 5 of the Amended Act, was properly given.

II.

Was the assessment against the taxpayers excessive?

The Circuit Court of Appeals dismisses this objection with the remark that it does not go to the validity of the judgment.

In addition to this we will call attention to the provision of Section 3 of the Amended Act requiring the Commissioner to make in his assessment "due allowance for probable delinquen-

cies," and to that of Section 8 providing that any surplus collected shall be paid over to the County and used in paying bonds issued under the Act.

In view of the smallness of the assessments and the well-known difficulties of collection it can hardly be argued that the Commissioner erred, nor could his error, if he made one, render the judgment void.

III.

That the bonds from which the coupons sued on were cut did not contain the stipulation required by Section 10 of the Amended Act.

Upon this proposition the Circuit Court of Appeals rested its opinion, and it must be discussed more fully.

The section of the Act referred to reads as follows:

> "Sec. 10. The bonds to be issued under the Act to which this is an amendment shall, on their face, stipulate that the holders of any of them or any coupon thereof shall be entitled to the remedies for the collection of the same herein, and in the Act to which this is an amendment provided for."

The bonds did not contain the stipulation referred to in the statute, but did contain on their face the following recital:

> "This is one of an issue amounting in all to $125,000 authorized by an Act of the General Assembly of the Commonwealth of Kentucky, approved March 18, 1878." (Rec. 68.)

Each bond also bore the following endorsement:

> "Issued by authority of an Act of the General Assembly of the State of Kentucky, approved March 18, 1878." (Rec. 69.)

The question, and indeed the case, turns upon two propositions, namely, were the recitals a substantial compliance with

the provisions of Section 10, and if not, was that section mandatory or directory?

We think it was a substantial compliance, because a bond issued under an act is necessarily governed by the act, and hence the holder of the bond must be "entitled to the remedies" afforded by the act. To say that a bond is issued under an act expresses to a common intent the whole idea. To add that it is entitled to the benefits of the act is surplusage whether we call it a stipulation or what not.

We also submit that Section 10 was only intended to make the bonds attractive to purchasers and was plainly directory.

The tests for distinguishing mandatory from directory provisions are plain and simple. In French v. Edwards, a tax case, reported in 13 Wall. 506, this Court said:

> "When the requisitions prescribed are intended for the protection of the citizen and to prevent a sacrifice of his property, and by a disregard of which his rights might be and generally would be injuriously affected, they are not directory but mandatory."

In Lyon v. Alley, 130 U. S. 185, this language was quoted with approval, and in Erhardt v. Schroeder, 155 U. S. 129, you said that a statute was mandatory "if its literal observance might afford substantial protection to the party complaining."

Was there any "substantial protection" to the taxpayer in requiring the bond to stipulate that the holder should be entitled to the benefits of the Act under which it was issued? Plainly not. If there was any protection it was for the bondholder and not the taxpayer. The surrounding circumstances as well as the language of the section show this. The County had defaulted. The new bonds were to be issued to raise money to pay off the old ones at fifty cents on the dollar. They must bear on their very face the birthmark of repudiation. Something had to be done to make them sell, and that some-

thing was to give the holders a more effectual remedy than the old bondholders had. For this purpose the Amended Act was passed, and for this purpose the remedies afforded by it were to be prominently mentioned and stipulated for in the bond.

What was there in all this to benefit or protect the taxpayer?

The only answer to this question which has ever been suggested is that given by the Circuit Court of Appeals, which we copy entire:

> "The purpose doubtless was to compel the authorities issuing them to recognize the fact that by such stipulation they were consenting to the special and stringent remedies of the Act." (Rec. 85).

What is it that the County officers were to "recognize?" That they were issuing bonds under the Act? That they did recognize in two places on the bonds actually issued.

Was it that they were to "recognize" the fact that the bonds might be enforced by suit? This is so plainly provided for in the Act that he who runs may read.

The recognition idea is so elusive that the mind of a plain man can scarcely grasp it, but, if it were otherwise, is there any "substantial protection" to the taxpayer to arise from it, or, in other words, any substantial damage to accrue from its absence?

Suppose the County officers did or did not "recognize" what they were doing, what gain or loss was there to the County?

None has ever been suggested, and we can not imagine any.

But even if the "recognition" idea be sound and substantial as an original proposition, we think the Court erred in

applying it in this case. If Section 10 was mandatory and was not complied with the bond was void. If it was directory it was valid. There is no middle ground.

Now, judgment was rendered against the County by default and was not appealed from. It conclusively established the validity of the bonds. This case relates only to the remedy, and the statute gives that to *all judgment creditors*. This is its language:

> "Sec. 2. That in the event judgment shall be rendered *on any bond or bonds* which may be issued by the county of Taylor under the provisions of the act to which this is an amendment, or *on any coupons* of any such bond or bonds, such judgments shall constitute a lien upon all real and personal property in said county, subject to taxation under the revenue laws of this Commonwealth.
>
> "Sec. 3. If the Court rendering *such judgment* shall be of opinion that such serious obstruction is likely to be offered to the enforcement of *any such judgment* as will materially delay it, it shall, on motion of the plaintiff therein, refer the same to a commissioner, etc."

How can the Court go behind the judgment and look at the coupons upon which it was rendered and then trace those coupons to the bonds from which they were cut and then say that while it is such a judgment as the Act calls for yet it can not be enforced as the Act provides?

This we think a fatal objection to the conclusion reached by the Circuit Court of Appeals, but for obvious reasons we prefer that the Court shall dispose of the question as to whether the provision of the statute is mandatory.

There are also copious suggestions in the opinion which seem to have weighed heavily in drawing the Court to the conclusion that Section 10 was mandatory and not directory.

The opinion states that the Act is "one of the most stringent and extraordinary Acts which has come under our observation," that "its operation must be attended with unusual

harshness and extraordinary expense," that its provisions are "novel and summary" and "novel and drastic," and the conclusion is reached that "such an Act should be strictly construed, and a case clearly made out before any relief should be extended thereunder."

It might be suggested that the proper time for the inhabitants of Taylor County to have discovered the enormities of this statute was when they got the legislature to pass it and sold the bonds issued under it; but, passing that, let us see whether it deserves the animadversions so liberally bestowed upon it by the Court below.

Commencing with the assessment, we find it provided, in Section 3 of the Act, that it is to be based on the State assessment for taxes, but is to be made by a commissioner appointed by the court instead of the regular State assessor. That may be unusual, but can hardly be justly called harsh or oppressive. When the assessment is made it is to be returned into court, its filing to be advertised for three weeks, and afterward thirty days' time is to be given for exceptions. (Sec. 5.)

The opinion says that this is due process of law, and does not anywhere intimate that there is any harshness or oppression in the assessment.

Coming now to the enforcement, we find that directed to be done by judgment, and at the expiration of ninety days by execution. (Sec. 7.)

Surely that is less harsh to the taxpayer than the usual method of collecting taxes by advertisement and sale.

The opinion also states that Act is

> "a wide departure from ordinary methods for enforcing the payment of a judgment against a municipality armed with full power to assess and collect a tax to meet its obligations."

This is true, but we will be pardoned for suggesting the fact that the first set of bondholders did not find this armament sufficient to enable them to collect their bonds, and that some "wide departure" was necessary to induce others to subscribe for the second issue.

Stress is also laid in the opinion on the fact that the operation of the statute

> "must be attended with unusual harshness and extraordinary expense, growing out of the fact that separate judgments are provided for against taxpayers, upon which separate executions must go."

It is true that a suit is more expensive than a levy and sale, but the Court overlooks the fact, which appears from Hubbert's affidavit, that a levy has already been made to pay the coupons of 1896 and 1897 (Rec. 71), and that certain citizens have paid their proportions of the debt. (See Report, p. 72.) This shows that each taxpayer has had an opportunity to avoid the expense of a suit by paying his taxes, and should diminish the sympathy which the Court seems to have extended to him.

We may also properly suggest that where the taxpayer refuses to pay his taxes, and where no one can be found to act as sheriff and make him pay them, a law which subjects him to the costs of a suit can hardly be condemned on the ground of its "extraordinary expense."

It may also occur to your Honors that in a case where the ordinary remedies had proven ineffectual to coerce payment of a former issue of bonds, and where it was desired to give new bondholders a new remedy, the one which was given in this case was about as inexpensive as any which could be devised.

The Federal Reports furnish several precedents for such a statute.

In Supervisors v. Rogers, 7 Wallace, 175, a State statute empowered its courts to appoint an officer to perform any duty required to be performed under a mandamus. A Federal court sitting in that State appointed its Marshal to levy and collect a tax, and its action was affirmed by this Court. That case was also approved by this Court in

Thompson v. Allen County, 115 U. S. 559.

In Stansell v. Levee Board, 13 Fed. Rep. 846, bonds had been issued under a Mississippi statute authorizing the State courts, in the event of non-payment, to appoint commissioners to levy and collect a tax. The Federal court was applied to and afforded the relief.

In none of these cases was there any suggestion from court or counsel that there was anything harsh or oppressive in taking the power to levy and collect taxes from those who would not or could not perform their duty, and conferring it upon those who would.

There is a long line of cases, which are reviewed in Thompson v. Allen County, holding that the taxing power is a sovereign one, and must be exercised by those to whom the State has committed it, but the opinion in this case is the first to intimate that courts should hesitate to exercise such powers when so conferred.

IV.

That Hubbert was not a *bona fide* holder of the coupons upon which he obtained judgment against the County.

To this we answer that this question has passed into judgment.

V.

That the Act under which the bonds were issued has been repealed.

The question of repeal is discussed by the Circuit Judge in his opinion at page 19 of the Record.

We deem it sufficient to say that the remedy afforded by the Act was a part of the contract and was beyond the reach of repeal.

Seibert v. Lewis, 122 U. S. 284;
Seibert v. U. S., 129 U. S. 192.

We respectfully submit that the judgment of the Circuit Court of Appeals ought to be reversed.

W. O. HARRIS,
For Petitioner.

APPENDIX.

CHAPTER 483.

AN ACT FOR THE BENEFIT OF TAYLOR COUNTY, EMPOWERING IT TO COMPROMISE ITS DEBTS, ISSUE BONDS, AND LEVY AND COLLECT TAXES TO PAY THE SAME.

BE IT ENACTED, By the General Assembly of the Commonwealth of Kentucky:

Section 1. That the county of Taylor be, and it is hereby authorized and empowered to make and enter into any contract or contracts, with any person or persons, corporation or association of persons, for the compromise, purchase, or redemption of any and all bonds, coupons, judgments, or other indebtedness of said county, whether the same be due or not due, growing out of the issue of any bonds or coupons heretofore issued by said county; and said county, acting through its county court, and such agents as may be appointed by the county court of Taylor county, are hereby authorized and empowered to execute and carry out such contracts, and for that purpose it is hereby authorized to issue, negotiate, and deliver new bonds of said county, not exceeding one hundred and twenty-five thousand dollars, in such amounts as it may deem best, and on such time as the county may think proper, and bearing any rate of interest not exceeding eight per cent per annum, with coupons attached to represent the interest, payable semi-annually at such time and place as it may think best. The bonds to be signed by the county judge and county court clerk, with the seal of said county attached, and the coupons on said bonds to be signed by the clerk alone. And it shall have the right to sell all or any number of said bonds at not less than their par value, the proceeds of which may be used to buy the present outstanding bonds of Taylor county, at rates not to exceed fifty cents on the dollar, or to exchange the same with the holders of bonds of Taylor county now outstanding, upon such terms as may be agreed to by the holders and the said county court of Taylor county and its agents, upon the surrender and cancellation of the old bonds: *Provided*, that in such exchange no greater rate shall be allowed in exchange than fifty cents on the dollar for said old bonds. And the county clerk of said county shall keep a record of all bonds issued under this act, showing the date of such bond, when payable, the amount thereof, and the number

of coupons attached to each bond; which record shall also show the number and amount of bonds sold, and the number and amount exchanged for other bonds of said county. The records shall also show the number, amount of bonds, and coupons taken up and canceled by sale or exchange of the new bonds, and said record shall be open at all times to the inspection of the taxpayers of said county.

Sec. 2. That the faith and credit of the county of Taylor be, and the same is hereby, pledged to carry out, in good faith, any and all contracts made by it for the issue, purchase, compromise, and redemption of any and all bonds and coupons issued under the first section of this act; and any and all bonds and coupons issued and delivered under this act shall be valid and binding on the parties thereto; and any *bona fide* holder or owner of any such bond or coupon, issued and delivered as aforesaid, on obtaining a judgment, in any court of competent jurisdiction, against the said county, shall, if the county refuses, for thirty days after demand, to levy and proceed in good faith to have collected a tax sufficient to pay any such judgment, interest, and costs, be entitled, on application to the circuit court, or, in vacation, to the circuit judge of the seventh judicial district, after having notice thereof served on the judge of said county, to have an order made, based on the last preceding assessment, levying a tax and appointing a collector, whose duty it shall be to collect from the taxpayers of Taylor county sufficient to pay off such judgment, interest, and cost, and the cost of collecting the same; and the collector so appointed shall have all the power given by law to the collectors of State revenue and county levies, and be liable in like manner; *Provided, also*, That any collector appointed under this section shall, before he proceed to act, execute a bond, with good solvent surety, to be approved and attested by the judge of the said district, the same to be by him delivered to the Taylor county court clerk for safe keeping; and should the county court, held by county judge and justices, or by the county judge, fail, for ten days after demand in writing, to levy and proceed in good faith to collect a tax as provided in this act, then, and in that event, it is hereby made the duty of the circuit court, or judge thereof in vacation, being informed of such failure by any *bona fide* bondholder or his attorney, to levy and have collected, as in case of a judgment, a tax to pay off semi-annual interest on past due coupons of bonds issued under this act, of which application the county court or judge thereof shall have ten days' written notice.

Sec. 3. That if at any time all the justices of the peace of Taylor county shall resign, or if at any time the number of

justices, from death, resignation, or other cause, be reduced to a less number than a majority of all the justices to which, by law, said county is entitled, then, and in that event, the county judge of said county, sitting as a court, shall have and exercise all the powers of the county court of Taylor county, within the meaning and purview of this act, and possess and exercise all the powers conferred upon the Taylor county court by this act.

Sec. 4. That it shall be the duty of all collectors appointed under the provisions of this act to make monthly reports, under oath, to the county treasurer of Taylor county of all moneys collected by him or them; and such collectors shall at once pay over to the county treasurer the amount of all moneys collected by him, less the commissions allowed by law or order of the court or judge making the levy. And it is hereby made the duty of the treasurer of Taylor county to deposit all moneys collected under the provisions of this Act, so soon as he receives the same, in some solvent bank, with a paid-up capital of not less than $100,000, to the credit of Taylor county, which money shall be paid out by such bank only upon the check of the treasurer of Taylor county. And no such collector or treasurer shall have the right to use or loan said money, or any part thereof, for any purpose whatever, save and except as provided in this Act.

Sec. 5. All such collectors shall collect the entire tax in his hands, and pay the same over to the county treasurer within six months from the time the tax-books are placed in his hands for collection. And it is hereby made the duty of the sheriff of Taylor county to collect all tax levied by the county court under this act; and should he fail for ten days, after the levy of any such tax and notice to him, to execute bond, with good and sufficient surety, to be approved by the county court, then it shall be the duty of said county court to declare, by order of record, his office of tax collector forfeited. And in that case it is made the duty of the said county court to appoint a tax collector, and take bond from him, with good and approved surety, and fix, by order, the compensation of such collector. And if any sheriff or tax collector shall fail to collect or pay over the taxes, as provided in this act, to the county treasurer, such sheriff or collector so in default shall, with his sureties in his official bond, be liable to an action, on motion on ten days' notice in the Taylor circuit or common pleas courts, in which action the county of Taylor, in its own name, shall recover for any default of the sheriff or collector the amount due the county, with interest from the time it should have been paid, the costs of the action

or motion, and ten per cent damages on the amount found due and recoverable. And should the treasurer of Taylor county fail to pay over any money in his hands when ordered to do so by the Taylor county court, he and his sureties shall be liable in like manner as is herein provided in regard to sheriffs and tax collectors; and the Taylor county court, held by the county judge, shall have the right to require all sheriffs, tax collectors, and the treasurer of Taylor county to renew or give additional surety upon the official bonds of such officers, as often as he may think proper, so as at all times to have securities on said bonds good and solvent for any amount of money in their respective hands.

Sec. 6. That it shall be the duty of Taylor county to have an assessment, make a levy, appoint a collector, and have collected from the taxpayers of Taylor county, upon all property which is now or may hereafter be assessed for, and subject to, State revenue purposes, including the amount given in order to equalize law, to pay the semi-annual interest or past due coupons on all bonds issued under the provisions of this act, and also to pay off and take up the said bonds at maturity; and if the county court shall deem it proper, it may, in addition to the tax herein provided for, levy an additional tax upon the taxable property of said county to create a sinking fund to purchase any or all bonds and coupons issued under the provisions of this act.

Sec. 7. That the county court of Taylor county shall cancel all bonds and coupons purchased under the provisions of this act by writing on the face thereof, with red ink, the following: "This bond has been bought in by Taylor county, and is not to be reissued;" and the county clerk, in the presence of the county judge, after having made a record of the bonds and coupons purchased under this act, shall burn the same.

Sec. 8. *Be it further enacted*, And as an inducement to the taxpayers of Taylor county to furnish the money with which to at once purchase the outstanding bonds and debts of said county, it is hereby made lawful for the taxpayers, or any of them, of Taylor county, to pay to the county treasurer his or their taxes due, or to become due, to said county, taking his receipt therefor; and all payments so made are declared a valid payment of such a one's share of the taxes due, or to become due, on account of the present indebtedness of said county, to the extent he or they may thus pay; and if the amount of the payment or payments thus made shall be equal to or exceed the whole amount of taxes due, and to become due, by such taxpayer, to take up the bonded debt of said county, then the

taxpayer so paying shall be relieved from any further taxes under this act; and should any taxpayer pay, under this section, more than his proper quota of said indebtedness, then it shall be the duty of the county to refund to him the over-plus so soon as ascertained, or as may be agreed upon; and the treasurer of Taylor county shall keep a record-book, in which he shall open an account with the parties making advancements under this section, which book shall be carefully indexed, and show the full names of the payers, the amounts paid, and the date of payment; and the book shall be subject at all times to inspection by the parties making advances, and the Taylor county court and sheriff or collector; and the money or moneys thus collected shall be deposited by the treasurer in like manner as that taken in through the collectors, and be subject to the same restrictions in every respect; and the county court shall make the treasurer a proper allowance for his trouble under this act, to be paid out of the amount collected.

Sec. 9. That if any sheriff, collector, or the county treasurer, or other county officer having charge or control thereof, shall use, loan, or in any way misapply any money or moneys collected or raised under this act, except the commissions to which, by law, they may be entitled, or shall be a party to any such misapplication of said fund, or any part thereof, or aid or assist any one so offending, shall be guilty of felony, and, upon indictment and conviction, shall be confined to the penitentiary of this Commonwealth for a period of not less than two nor over ten years.

Sec. 10. This act shall be in force and take effect from and after its passage.

Approved March 18, 1878.

CHAPTER 306.

AN ACT TO AMEND AN ACT ENTITLED, "AN ACT FOR THE BENEFIT OF TAYLOR COUNTY, EMPOWERING IT TO COMPROMISE ITS DEBTS, ISSUE BONDS, AND LEVY AND COLLECT TAXES TO PAY THE SAME." APPROVED MARCH 18, 1878.

BE IT ENACTED by the General Assembly of the Commonwealth of Kentucky:

Section 1. That the words "twenty-five," preceding the word "thousand," in the first section of this act, be, and the same is hereby, stricken out, and the word "fifty" inserted in lieu thereof.

Sec. 2. That in the event judgment shall be rendered on any bond or bonds which may be issued by the county of Taylor under the provisions of the act to which this is an amendment, or on any coupons of any such bond or bonds, such judgments shall constitute a lien upon all real and personal property in said county, subject to taxation under the revenue laws of this Commonwealth.

Sec. 3. If the court rendering such judgment shall be of opinion that such serious obstruction is likely to be offered to the enforcement of any such judgment as will materially delay it, it shall, on motion of the plaintiff therein, refer the same to a commissioner, with instructions to ascertain and report, on a day to be by it named, the amount which it will be necessary for the holders or owners of any such property to pay in order to raise promptly, in proportion to the value of such property owned by each, a sum suffieient to pay the said judgment, and all costs of the said suit, and the costs of collecting the same, making due allowance for probable delinquencies. Upon making any such reference, the said court shall make an order, and, if need be, enforce it by process of contempt, directing the officers having charge of the books containing the last assessment for the purpose of State taxation, to deliver them to the said commissioner, to be by him used in making out his report.

Sec. 4. If, for any reason, such assessment books shall not be promptly forthcoming, the court shall provide for a new assessment under the direction and supervision of the said commissioner.

Sec. 5. Upon the completion of said report, the said commissioner shall file the same in the clerk's office of said court, and publish in a newspaper published in Taylor or Marion county, once each week for three weeks, a notice of the filing of said report, and stating that the same will be subject to exceptions, to be filed in said clerk's office until a day to be mentioned in said notice, which day shall not be less than thirty nor more than forty days from the last day on which the said notice is to be published.

Sec. 6. On a day to be named by the court in the order referring the said judgment to the commissioner, or on the first day of the next regular or special term of the said court after the expiration of the time for filing exceptions, the said exceptions shall stand for hearing; but the hearing thereof may be continued from time to time, for good cause shown, or to suit the convenience of the court.

Sec. 7. When, after such correction as the court may deem proper, the said report shall be approved and confirmed, judg-

ment shall be rendered against the parties named in the report for the amounts therein named, and at the expiration of ninety days from the date of said judgment several executions shall issue against all persons who have not then paid to the sheriff, or other officer who collects executions from said court, for the sums adjudged to be due by them respectively, which may be levied on any property subject to the State revenue tax held by the defendants, respectively, or which was owned by them at the date of the judgment.

Sec. 8. The court shall make proper orders for the safe keeping and disposition of the money to be collected under the provisions of this act; and if the amount collected shall be more than necessary to pay the judgment and costs, the residue shall be paid over to the commissioner of the sinking fund of said county, to be used for the payment of the principal and interest of bonds issued under the act to which this is an amendment.

Sec. 9. The sheriff or other officer who may collect such sums as shall be voluntarily paid to him under any such judgment shall be entitled to the same compensation which sheriffs receive for collecting taxes due to this Commonwealth.

Sec. 10. The bonds to be issued under the act to which this is an amendment shall, on their face, stipulate that the holders of any of them, or any coupon thereof, shall be entitled to the remedies for the collection of the same herein, and in the act to which this is an amendment, provided for.

Sec. 11. This act to take effect from its passage.

Approved February 27, 1882.